

COMMITTEE FOR PUBLIC COUNSEL SERVICES

PERFORMANCE STANDARDS

GOVERNING THE REPRESENTATION OF MINORS SEEKING JUDICIAL CONSENT FOR ABORTION {G.L. c. 112, § 12S}

These standards are intended for use by the Committee for Public Counsel Services in evaluating, supervising and training counsel assigned pursuant to G.L. c. 211D. Counsel assigned pursuant to G.L. c. 211D must comply with these standards and the Massachusetts Rules of Professional Conduct. In evaluating the performance or conduct of counsel, the Committee for Public Counsel Services will apply these standards and the Massachusetts Rules of Professional Conduct, as well as all CPCS policies and procedures included in this manual and other CPCS publications.

These standards describe the steps which should be taken by an attorney assigned to represent a minor petitioning for authorization for an abortion pursuant to G.L. c. 112, § 12S. They must be utilized in association with the training manual prepared by the Judicial Consent for Minors Lawyer Referral Panel and the Committee for Public Counsel Services and the required training program, which describe in detail the law and procedure governing hearings under this statute.

1. The role of the attorney in a hearing pursuant to G.L. c. 112, § 12S, is to act as legal counsel for the minor petitioner in seeking approval of the petition, and to insure the petitioner is afforded all her due process, privacy and other rights.
2. Immediately upon request to represent a petitioner, the attorney shall make any arrangements necessary to communicate with or to allow the client to communicate with him/her, including leaving with the person assigning the case and with the attorney's office staff, if any, directions on how and when the attorney can be best reached. The attorney shall also determine the earliest practicable time when a hearing may take place, taking into account all information supplied by the person assigning the case as to the client's availability for said hearing. If the attorney's own schedule does not permit her/him to promptly handle the matter the attorney shall decline to represent the petitioner. In all cases the attorney shall notify the referring agency of her/his inability to handle the matter as soon as possible.
3. The attorney should make all efforts to communicate with the petitioner as soon as possible, but at least within forty-eight (48) hours of accepting the case. The attorney must carefully follow any instructions given by the person or agency referring the case as to how to safely contact the petitioner (*i.e.*, times to call, whether or not to leave any message). In the majority of cases, the attorney may not be able to initiate contact with the client, and must therefore make all efforts to be available when the client initiates communication, including leaving with the person or agency assigning the case and with the attorney's office staff, if any, directions on how and when the attorney can best be reached; giving permission for office staff to accept collect calls; and providing alternative methods by which the attorney could be reached, including cell phone numbers, and, if the attorney is willing, home telephone numbers.

If the attorney is unable to contact the petitioner or is not contacted by the petitioner within forty-eight (48) hours of accepting the case, the attorney must contact the person or agency who referred the case to determine if there has been any further contact by the petitioner and/or if there is any new information concerning how to contact the petitioner.

4. At the initial consultation, which initiates the lawyer-client relationship, the attorney shall:
 - a. explain G.L. c. 112, § 12S (judicial consent law) and applicable legal procedures to the client;
 - b. determine the reasons for seeking judicial consent;
 - c. determine those factors which indicate or illuminate the minor's maturity and/or the minor's best interest;
 - d. determine how the client knows of her pregnancy and what the length of her pregnancy is; and
 - e. determine the client's understanding of the nature of the legal proceeding and medical proceeding.
5. If a hearing has not been scheduled at the time of the initial contact, or if the petitioner cannot attend the scheduled hearing, the attorney should immediately reschedule the hearing, preferably while the client is still immediately accessible. Should the attorney be unable to obtain a hearing within seventy-two (72) hours (other than by request of the client) the attorney shall contact the Office of the Chief Justice of the Superior Court to make arrangements for a hearing.
6. The attorney shall thoroughly investigate the relevant facts through a complete discussion with the client. Contact with any other person should be made only at the request of or with the permission of the client.
7. The attorney shall make certain that the client is aware of the exact location of the court where the hearing is to be held, and the exact place that the attorney and client will meet, giving directions, if needed. If there is any question as to the client's understanding of either location, the attorney shall request that the client describe to the attorney her understanding of the location. The attorney shall make sure that s/he and the client have appropriate information so that they can identify one another. The attorney shall also make certain the client has some form of transportation to the court.
8. The attorney shall determine from the clerk assigning the hearing whether any particular information or documents are required by the judge for the hearing (*e.g.*, written pregnancy test results, ultrasound) and shall take all steps necessary to obtain the information.
9. The attorney shall determine that the client has received appropriate counseling as to the relevant abortion procedures and risks. If the attorney feels that the client has not received this counseling s/he shall provide the client with information on where such counseling can be obtained.
10. At or before the hearing the attorney shall prepare the necessary court papers and take all steps to insure the client's privacy.
11. At all times the attorney shall do everything necessary to protect the confidentiality of the client.
12. At the hearing the attorney shall act as a zealous advocate for the client, insuring that the proper procedures are followed and that all information concerning maturity, and if necessary, best interest, is placed on the record.
13. After the hearing the attorney shall make sure the client has all necessary papers so that an abortion can be performed and that the client knows how to contact the attorney if any problems arise.

14. Should the petition be denied, the attorney shall immediately file a notice of appeal and take all steps to expedite an appeal within forty-eight (48) hours. The attorney shall also, in any case, immediately contact a member of the Judicial Consent for Minors Lawyer Referral Panel steering committee.

15. If an attorney has accepted a case but cannot attend the hearing because of illness or other serious problems, the attorney shall be responsible for obtaining appropriate substitute counsel trained to represent clients in these cases, appraising substitute counsel of all necessary information and, if possible, contacting the client with this information. If the attorney is unable to obtain such counsel on his/her own, s/he shall immediately contact the person or agency who referred the case to arrange for such qualified substitute counsel. If this cannot be done because of time constraints or evening hours, counsel shall contact one of the attorneys listed in the front of the Judicial Consent for Minors Training Manual to arrange for appropriate substitute counsel. At no time is it appropriate for the attorney to inform the client that it is her responsibility to arrange for substitute counsel.